

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
SUNSET POINT POST OFFICE,  
Clearwater, FL, Employer**

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**Docket No. 08-1018  
Issued: October 6, 2008**

*Appearances:*

*William Hackney, for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 21, 2008 appellant filed a timely appeal from a January 29, 2008 decision of the Office of Workers' Compensation Programs denying an additional schedule award for left upper extremity impairment.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has more than a nine percent impairment of the left upper extremity, for which he received a schedule award. On appeal, appellant, through his authorized representative, contends that the Office failed to recognize additional impairment resulting from January 27, 2007 surgery.

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<sup>1</sup> Appellant did not appeal a January 14, 2008 schedule award decision regarding the right upper extremity or a February 22, 2008 loss of wage-earning capacity determination. Therefore, the issues are not before the Board on the present appeal.

## **FACTUAL HISTORY**

This is appellant's second appeal before the Board. By order dated February 14, 2006,<sup>2</sup> the Board set aside a June 17, 2005 decision denying a schedule award for bilateral upper extremity impairment. The Board found that the Office failed to consider the March 28, 2005 report of Dr. H. Gerard Siek, an attending Board-certified orthopedic surgeon. The Board remanded the case to the Office for further development to be followed by an appropriate decision. The relevant facts are set forth below.

The Office accepted that, on or before April 15, 1999, appellant, then a 59-year-old letter carrier, sustained synovitis, bursitis, osteoarthritis, a loose body and a SLAP (superior labrum anterior-posterior) lesion of the left shoulder due to repetitive motion at work. Appellant underwent left shoulder arthroscopies on June 10 and August 26, 2003 to repair the SLAP lesion, rotator cuff tears and a glenoid labrum tear.

In a March 28, 2005 report, Dr. Siek found left shoulder flexion limited to 130 degrees, 40 degrees extension, 120 degrees abduction, 30 degrees adduction and 70 degrees external rotation. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), Dr. Siek noted that, according to Tables 16-40,<sup>3</sup> 16-43<sup>4</sup> and 16-46,<sup>5</sup> appellant had a nine percent impairment of the left upper extremity due to restricted shoulder motion.<sup>6</sup>

The Office referred the medical record to an Office medical adviser. In a February 23, 2006 report, the Office medical adviser applied Figures 16-40, 16-43 and 16-46 of the A.M.A., *Guides* to Dr. Siek's findings to arrive at a nine percent impairment of the left upper extremity: three percent for limitation of forward elevation to 140 degrees; one percent for limitation of backward elevation to 40 degrees; three percent for abduction restricted to 120 degrees; one percent for adduction limited to 30 degrees; one percent for internal rotation restricted to 70 degrees. The medical adviser noted that, under a separate claim,<sup>7</sup> appellant had been issued a schedule award for a five percent impairment of the left upper extremity due to carpal tunnel syndrome. He subtracted the five percent wrist impairment previously awarded from the nine

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<sup>2</sup> Docket No. 05-1507 (issued February 14, 2006).

<sup>3</sup> A.M.A., *Guides* 476, (5<sup>th</sup> ed.) Figure 16-40, is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder."

<sup>4</sup> *Id.* at 477, Figure 16-43, is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Abduction and Adduction of Shoulder."

<sup>5</sup> *Id.* at 479, Figure 16-46, is entitled "Pie Chart of Upper Extremity Impairments Due to Lack of Internal and External Rotation of Shoulder."

<sup>6</sup> In a March 31, 2005 report, Dr. David P. Kalin, an attending Board-certified family practitioner, observed a loss of 10 degrees internal rotation of the left shoulder. He opined that appellant had reached maximum medical improvement.

<sup>7</sup> File No. 06-2105516. The case now before the Board was assigned File No. 06-2070769.

percent impairment for the shoulder, resulting in an additional four percent impairment of the left upper extremity.

By decision dated April 6, 2006, the Office granted appellant a schedule award for an additional four percent impairment to the left arm, for a total of nine percent. The period of the award ran from March 28 to August 6, 2005.

On January 27, 2007 Dr. Harry Steinman, an attending Board-certified orthopedic surgeon, performed a repeat subacromial decompression of the left shoulder, with a distal clavicular resection and debridement of a partial-thickness rotator cuff tear. The Office authorized the procedure. In April 26, 2007 reports, Dr. Steinman found that appellant had reached maximum medical improvement. He noted the following ranges of motion: 90 to 115 degrees abduction; 60 degrees external rotation; 70 degrees internal rotation; 145 to 150 degrees forward flexion.

On April 27, 2007 appellant claimed an additional schedule award. He submitted a May 25, 2007 assessment from Dr. Steinman. Referring generally to Tables 16-40 through 16-43 and Table 16-46 of the A.M.A., *Guides*, Dr. Steinman opined that appellant had an additional three percent impairment of the left upper extremity for limited shoulder flexion and an additional three percent impairment for limited abduction.

The Office referred the medical record to an Office medical adviser to calculate a schedule award. In an August 8, 2007 report, an Office medical adviser found that appellant was not entitled to an additional schedule award as the six percent recommended by Dr. Steinman was less than the total nine percent already awarded for left arm impairment.

By decision dated August 10, 2007, the Office denied appellant's April 27, 2007 claim for an additional schedule award as the medical evidence did not establish additional impairment beyond the nine percent previously awarded.

In an August 17, 2007 letter, appellant requested a telephonic hearing, held November 15, 2007. During the hearing, appellant asserted his entitlement to an additional schedule award. He submitted a September 11, 2007 letter from Dr. Steinman who opined that after the January 26, 2007 left shoulder surgery, appellant had an additional six percent impairment of the left upper extremity in addition to the nine percent found by Dr. Siek on April 12, 2005.

The Office referred the medical record to an Office medical adviser for a schedule award calculation. In a January 10, 2008 report, the Office medical adviser opined that the most recent range of motion measurements indicated no ratable increase due to restricted shoulder motion. Appellant was not entitled to an additional schedule award as he had already been granted schedule awards for a total nine percent impairment of the left arm.

By decision dated and finalized January 29, 2008, an Office hearing representative affirmed the August 10, 2007 decision denying an additional schedule award for the left upper extremity. The hearing representative found that the medical evidence did not establish that appellant had greater than the nine percent impairment of the left upper extremity previously awarded.

## **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>8</sup> provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>9</sup> As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.<sup>10</sup>

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.<sup>11</sup> Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.<sup>12</sup> Multiple impairments of one extremity are present, such as those of the hand, wrist, elbow and shoulder, are first expressed individually as upper extremity impairments and then combined to determine the total upper extremity impairment.<sup>13</sup> It is well established that in determining entitlement to a schedule award, preexisting impairment to the scheduled member is included.<sup>14</sup>

## **ANALYSIS**

The Office accepted that appellant sustained bursitis, osteoarthritis, synovitis, rotator cuff tears and glenoid labrum lesions of the left shoulder, requiring two arthroscopies in 2003 and one in 2007. Under a different claim, the Office issued a schedule award for a five percent left upper extremity impairment due to carpal tunnel syndrome.

Dr. Siek, an attending Board-certified orthopedic surgeon, opined on March 28, 2005 that appellant had a nine percent impairment of the left upper extremity due to restricted shoulder motion. An Office medical adviser concurred with Dr. Siek's nine percent impairment rating.

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<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>11</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>12</sup> A.M.A. *Guides* 344-521, (5<sup>th</sup> ed. 2001) Chapter 16, "The Upper Extremities."

<sup>13</sup> *Id.* at 438, para. 16.1c, 481, 16.5b. *See also Cristeen Falls*, 55 ECAB 420 (2004).

<sup>14</sup> *Peter C. Belkind*, 56 ECAB 580 (2005).

However, instead of combining the regional impairments for the wrist and shoulder as set forth in the A.M.A., *Guides*,<sup>15</sup> the medical adviser subtracted the five percent wrist impairment from the nine percent shoulder impairment. This resulted in the April 6, 2006 schedule award for a four percent impairment of the left arm.

Dr. Steinman, an attending Board-certified orthopedic surgeon, opined that appellant sustained a six percent impairment of the left arm due to restricted motion. The Office denied appellant's claim for an additional schedule award in an August 10, 2007 decision, again subtracting the six percent impairment from the nine percent previously awarded instead of combining the wrist and shoulder impairments. In a September 11, 2007 letter, Dr. Steinman clarified that appellant sustained a total of 15 percent impairment of the left shoulder due to restricted motion. The Office medical adviser opined that the additionally decreased ranges of motion observed by Dr. Steinman did not warrant an additional schedule award beyond the nine percent previously awarded. It issued its January 29, 2008 decision denying an additional schedule award.

Appellant had two accepted impairment components affecting his left upper extremity: carpal tunnel syndrome and restricted left shoulder motion. These are two separate conditions affecting different joints of the left upper extremity. However, these impairments were not incorporated in the schedule award for his left upper extremity impairment. The Office erred by subtracting the impairment ratings rather than combining them. This is contrary to the A.M.A., *Guides*, which provides that multiple impairments of one extremity are first expressed individually, then combined to determine the total upper extremity impairment.<sup>16</sup>

The case will be remanded to the Office for further development, including assessments of impairment due to appellant's carpal tunnel syndrome and restricted left shoulder motion. Following this and any other necessary development, the Office shall issue an appropriate decision in the case.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision.

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<sup>15</sup> A.M.A., *Guides*, *supra* note 13.

<sup>16</sup> *Id.* at 438, para. 16.1c, 481, 16.5b, 481.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated and finalized January 29, 2008 is set aside, and the case remanded for further development consistent with this opinion.

Issued: October 6, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board